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7 Attorneys for Complainant

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation and Petition to  
Revoke Probation Against:

13 LEONARD BERNARD FIFER  
aka CURTIS EVERETT FIFER  
1175 East Ocean Blvd., #308  
14 Long Beach, CA 90802

15 Registered Nurse License No. 361652

16 Respondent.

Case No. 2000-148

**A C C U S A T I O N**  
**AND**  
**PETITION TO REVOKE**  
**PROBATION**

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation and  
21 Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Board  
22 of Registered Nursing, Department of Consumer Affairs.

23 2. On or about August 31, 1983, the Board of Registered Nursing (Board)  
24 issued Registered Nurse License No. 361652 to Leonard Bernard Fifer aka Curtis Everett Fifer  
25 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to  
26 the charges brought herein and will expire on September 30, 2009, unless renewed.

27 3. On June 15, 2005, in a disciplinary action entitled *In the Matter of the*  
28 *Accusation and Petition to Revoke Probation Against Leonard Bernard Fifer, Case*

No. 2000-148, the Board issued a Decision and Order, effective July 15, 2005, which provided that Respondent's license would continue to be in a revoked status, with the revocation stayed. Respondent was placed on probation for a period of five (5) years with certain terms and conditions. A copy of the Decision and Order, with its underlying Accusation and First Amended Petition to Revoke Probation, is attached as exhibit A and incorporated herein by reference.

4. On March 7, 2002, in a disciplinary action entitled *In the Matter of the Accusation Against Leonard Bernard Fifer aka Curtis Everett Fifer*, Case No. 2000-148, the Board issued a Decision After NonAdoption, effective April 6, 2002, in which Respondent's license was revoked. However, the revocation was stayed, and Respondent was placed on probation for a period of three (3) years, with certain terms and conditions. A copy of the Decision After NonAdoption is attached as exhibit B and incorporated herein by reference. A copy of the underlying First Amended Accusation is attached as exhibit C and incorporated herein by reference.

## JURISDICTION

5. This Accusation and Petition to Revoke Probation are brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

## STATUTORY PROVISIONS

6. Section 490 provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued

7. Section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

8. Section 2761 states, in pertinent part:

“The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

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1 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the  
2 present or potential unfitness of a registered nurse to practice in a manner consistent with the  
3 public health, safety, or welfare. . . .”

#### 4 COST RECOVERY

5 12. Section 125.3 provides, in pertinent part, that the Board may request the  
6 administrative law judge to direct a licentiate found to have committed a violation or violations  
7 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
8 enforcement of the case.

#### 9 CONTROLLED SUBSTANCE / DANGEROUS DRUG

10 13. Cocaine, and any cocaine base, is a narcotic drug according to Health and  
11 Safety Code section 11019, subdivision (e). It is a Schedule I controlled substance, as designated  
12 in Health and Safety Code section 11054, subdivision (f)(1), and a Schedule II controlled  
13 substance, as designated in Health and Safety Code section 11055, subdivision (b)(6). It is  
14 categorized as a dangerous drug according to section 4022.

#### 15 A C C U S A T I O N

#### 16 FIRST CAUSE FOR DISCIPLINE

#### 17 (Convictions of Substantially Related Crimes)

18 14. Respondent is subject to disciplinary action under sections 490 and 2761,  
19 subdivision (f), in conjunction with California Code of Regulations, title 16, section 1444, in that  
20 he was convicted of crimes which evidence to a substantial degree his present or potential  
21 unfitness as a registered nurse to practice in a manner consistent with the public health, safety, or  
22 welfare. The convictions are as follows:

23 a. On or about July 10, 2008, after pleading nolo contendere, Respondent  
24 was convicted of one misdemeanor count of violating Long Beach Municipal Code  
25 section 9.20.050 [nudity in a public place] in the criminal proceeding entitled *The People of the*  
26 *State of California v. Leonard Bernard Fifer* (Super. Ct. Los Angeles County, 2008,  
27 No. 8LG03843). The Court sentenced Respondent to 12 days in jail, placed him on summary  
28 probation for three (3) years, and ordered him to pay fines and penalties. The circumstances

1 underlying the conviction are that on or about April 10, 2008, Long Beach Police Department  
2 (LBPD) officers were dispatched to assist Long Beach Fire Department officers with Respondent  
3 for sitting naked in his parked vehicle in a public parking lot. The LBPD officers instructed  
4 Respondent to clothe himself and exit his vehicle. The officers found a glass pipe in  
5 Respondent's vehicle and cited him for violating LBMC section 9.20.050 (nudity in a public  
6 place) and Health & Safety Code section 11364 (possession of drug paraphernalia).

7           b.       On or about May 23, 2008, after pleading nolo contendere, Respondent  
8 was convicted of one misdemeanor count of violating Health and Safety Code section 11350,  
9 subdivision (a) [possession of a narcotic and/or controlled substance] in the criminal proceeding  
10 entitled *The People of the State of California v. Leonard Fifer* (Super. Ct. Los Angeles  
11 County, 2008, No. NA078334) with two admitted prior convictions of Health and Safety Code  
12 section 11350, subdivision (a). Respondent was placed on three (3) years of formal probation  
13 under the terms and conditions of Proposition 36. On or about July 15, 2008, Respondent's  
14 probation was terminated for a probation violation, which Respondent admitted. The Court  
15 reinstated Respondent's probation after sentencing him to 25 days in jail. The circumstances  
16 underlying the conviction are that on or about May 14, 2008, LBPD officers contacted  
17 Respondent during a routine traffic stop. The officers observed Respondent's objective  
18 symptoms of narcotics' intoxication and found a cocaine pipe in Respondent's vehicle. The  
19 officers arrested Respondent after he admitted smoking cocaine several hours before. The  
20 arresting officers also found rock cocaine in Respondent's vehicle.

21           c.       On or about May 5, 2008, after pleading nolo contendere, Respondent was  
22 convicted of one misdemeanor count of violating Penal Codes section 415, subdivision (2)  
23 [causing loud noise] in the criminal proceeding entitled *The People of the State of California v.*  
24 *Leonard Bernard Fifer* (Super. Ct. Los Angeles County, 2008, No. 8LG01919). Based on a plea  
25 bargain, the court dismissed the two misdemeanor counts Respondent had been initially charged  
26 with: violating Penal Code section 245, subdivision (a)(1) (assault with a deadly weapon) and  
27 Penal Code section 594, subdivision (b)(2) (deface/damage public property). The Court issued a  
28 protective order against Respondent, sentenced him to five (5) days in jail, and placed him on

1 three (3) years probation. The Court also ordered Respondent to perform 40 hours of community  
2 service, attend domestic violence counseling, and donate \$200 to a battered women's shelter. As  
3 a result of a probation violation, on or about June 18, 2008, Respondent was sentenced to an  
4 additional three (3) days in jail. As a result of a subsequent probation violation, on or about July  
5 21, 2008, the Court terminated Respondent's probation and sentenced him to an additional 45  
6 days in jail. The circumstances underlying the May 5, 2008 conviction are that on or about April  
7 30, 2008, LBPD officers responded to an assault with a deadly weapon call and, subsequently,  
8 arrested Respondent for using his vehicle as a weapon toward his co-habiting significant other.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct: Possession of Controlled Substance)**

11 15. Respondent is subject to disciplinary action under section 2761,  
12 subdivision (a), in conjunction with section 2762, subdivision (a), on the grounds of  
13 unprofessional conduct, in that on or about May 14, 2008, Respondent was in possession of  
14 cocaine, a controlled substance and dangerous, without a valid prescription. Complainant refers  
15 to and by this reference incorporates the allegations set forth in paragraph 14, subparagraph (b),  
16 inclusive, above, as though set forth fully.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct: Controlled Substance Related Conviction)**

19 16 Respondent is subject to disciplinary action under section 2761,  
20 subdivision (a), in conjunction with section 2762, subdivision (c), on the grounds of  
21 unprofessional conduct, in that, on or about May 23, 2008, Respondent was convicted of  
22 possession of a controlled substance. Complainant refers to and incorporates herein by reference  
23 the allegations set forth in paragraphs 14, subparagraph (b), and 15, inclusive, above, as though  
24 set forth fully.

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1 convicted on or about July 10, 2008, May 23, 2008, and May 5, 2008. Complainant refers to and  
2 by this reference incorporates the allegations set forth in paragraph 14, subparagraphs (a) - (c),  
3 inclusive, above, as though set forth fully.

### 4 **THIRD CAUSE TO REVOKE PROBATION**

#### 5 **(Failure to Appear for Interviews/Meetings)**

6 21. Condition 3 of the terms and conditions of probation contained in the  
7 decision in Case No. 2000-148 states:

8 "Respondent, during the period of probation, shall appear in person at  
9 interviews/meetings as directed by the Board or its designated representatives."

10 22. Respondent's probation is subject to revocation because he failed to  
11 comply with Probation Condition 3, when he failed to meet with Board representatives on  
12 May 30, 2008, per written notification.

### 13 **FOURTH CAUSE TO REVOKE PROBATION**

#### 14 **(Failure to Notify Board of Employment Termination)**

15 23. Condition 7 of the terms and conditions of probation contained in the  
16 decision in Case No. 2000-148 states:

17 "Respondent shall obtain prior approval from the Board before commencing any  
18 employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to  
19 the Board all performance evaluations and other employment related reports as a registered nurse  
20 upon request of the Board.

21 "Respondent shall provide a copy of this Decision to his employer and immediate  
22 supervisor prior to commencement of any nursing or other health care related employment.

23 "Respondent shall notify the Board in writing within seventy-two (72) hours after  
24 he obtains any nursing or other health care related employment, when such employment is not as  
25 a registered nurse. Respondent shall notify the Board in writing within seventy-two (72) hours  
26 after he is terminated from any registered nursing, other nursing, or other health care related  
27 employment with a full explanation of the circumstances surrounding the termination."  
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1                   24.     Respondent's probation is subject to revocation because he failed to  
2 comply with Probation Condition 7, referenced above, when he failed to notify the Board in  
3 writing within 72 hours of his termination from employment as a Registered Nurse from Little  
4 Company of Mary in San Pedro California.

5                                   **FIFTH CAUSE TO REVOKE PROBATION**

6                                   **(Failure to Abstain from Illegal Drug Use)**

7                   25.     Condition 12 of the terms and conditions of probation contained in the  
8 decision in Case No. 2000-148 states:

9                   "Respondent shall completely abstain from the possession, injection, or  
10 consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except  
11 when the same are ordered by a health care professional legally authorized to do so as part of a  
12 documented medical treatment program. Respondent shall have sent to the Board, in writing and  
13 within 14 days, by the prescribing physician or dentist, a report identifying the medication,  
14 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the  
15 medication will no longer be required, and the effect on the recovery plan, if appropriate.

16                  "Respondent shall identify for the Board a single physician, nurse practitioner, or  
17 physician assistant who shall be aware of Respondent's history of substance abuse and will  
18 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled  
19 substances, or mood-altering drugs. The coordinating physician, nurse practitioner, or physician  
20 assistant shall report to the Board on a quarterly basis Respondent's compliance within this  
21 condition. If any substances considered addictive have been prescribed, the report shall identify a  
22 program for the time limited use of any such substances.

23                  "The Board may require that the coordinating physician, nurse practitioner, or  
24 physician assistant to be a specialist in addictive medicine or to consult with a specialist in  
25 addictive medicine."

26                  26.     Respondent's probation is subject to revocation because he failed to  
27 comply with Probation Condition 12, referenced above, when he failed to abstain from the use of  
28 cocaine, a controlled substance and dangerous drug, on or about May 14, 2008. Complainant

1 refers to and by this reference incorporates the allegations set forth in paragraph 14,  
2 subparagraph (b), above, as though set forth fully.

3 **SIXTH CAUSE TO REVOKE PROBATION**

4 **(Failure to Submit to Random Testing)**

5 27. Condition 13 of the terms and conditions of probation contained in the  
6 decision in Case No. 2000-148 states:

7 "13. Respondent, at his expense, shall participate in a random, biological fluid  
8 testing or drug-screening program, which the Board approves. The length of time and frequency  
9 will be subject to approval by the Board. Respondent is responsible for keeping the Board  
10 informed of Respondent's current telephone number at all times. Respondent shall also ensure  
11 that messages may be left at the telephone number when he is not available and ensure that  
12 reports are submitted directly by the testing agency to the Board, as directed. Any confirmed  
13 positive finding shall be reported immediately to the Board by the program and the Respondent  
14 shall be considered in violation of probation.

15 "In addition, Respondent, at any time during the period of probation, shall fully  
16 cooperate with the Board or any of its representatives and shall, when requested, submit to such  
17 tests and samples as the Board or any of its representatives may require for the detection of  
18 alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

19 "If Respondent has a positive drug screen for any substance not legally authorized  
20 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the  
21 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent  
22 from practice pending the final decision on the petition to revoke probation or accusation."

23 28. Respondent's probation is subject to revocation because he failed to  
24 comply with Probation Condition 13, referenced above, when he failed to submit to random  
25 testing and calling in daily as required.

26 29. Respondent failed to test on: March 20, 2008, April 7, 2008, April 11,  
27 2008, April 21, 2008, May 6, 2008, and June 6, 2008.

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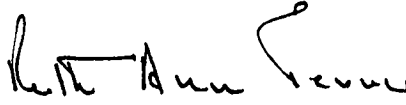
30. Respondent failed to call in on: March 1, 2008, March 2, 2008, March 8, 2008, March 9, 2008, March 15, 2008, March 16, 2008, April 4, 2008, April 5, 2008, April 6, 2008, April 10, 2008, April 11, 2008, April 14, 2008, April 15, 2008, April 21, 2008, April 22, 2008, April 24, 2008, April 25, 2008, April 28, 2008, April 29, 2008, April 30, 2008, May 1, 2008, May 2, 2008, May 5, 2008, May 6, 2008, May 7, 2008, May 8, 2008, May 9, 2008, May 12, 2008, May 13, 2008, May 14, 2008, May 15, 2008, May 16, 2008, May 19, 2008, May 20, 2008, May 21, 2008, May 22, 2008, May 23, 2008, May 27, 2008, May 28, 2008, May 29, 2008, May 30, 2008, June 2, 2008, June 3, 2008, June 4, 2008, June 5, 2008, June 6, 2008, June 9, 2008, June 10, 2008, June 11, 2008, June 12, 2008, June 13, 2008, June 16, 2008, June 17, 2008, and June 18, 2008. On June 18, 2008, the Board requested that a Petition to Revoke Probation be filed against Respondent.


**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Registered Nurse License No. 361652, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: December 22, 2008

  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

  
DEPUTY ATTORNEY  
GENERAL

**EXHIBIT A**

**DECISION AND ORDER, effective July 15, 2005  
Board of Registered Nursing Case No. 2000-148  
Office of Administrative Hearings Case No. L-2004030483**

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition  
to Revoke Probation Against:

AKA CURTIS EVERETT FIFER  
LEONARD BERNARD FIFER  
1901 East 63<sup>rd</sup> Street  
Long Beach, CA 90805

Registered Nurse License No. 361652

Respondent

Case No. 2000-148

OAH No. L-2004030483

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on July 15, 2005.

IT IS SO ORDERED June 15, 2005.

*Sandra S. Erickson*

President  
FOR THE BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

1 BILL LOCKYER, Attorney General  
of the State of California  
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7 Attorneys for Complainant

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation and Petition to  
13 Revoke Probation Against:

14 **LEONARD BERNARD FIFER**  
15 **AKA CURTIS EVERETT FIFER**  
16 1901 East 63rd Street  
Long Beach, CA 90805

17 Registered Nurse License No. 361652

18 Respondent.

Case No. 2000-148

OAH No. L-2004030483

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

19 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to  
20 the above-entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of  
23 the Board of Registered Nursing. She brought this action solely in her official capacity and is  
24 represented in this matter by Bill Lockyer, Attorney General of the State of California, by Earl R.  
25 Plowman, Deputy Attorney General.

26 2. Leonard Bernard Fifer (Respondent) is representing himself in this  
27 proceeding and has chosen not to exercise his right to be represented by counsel.

28 3. On or about August 31, 1983, the Board of Registered Nursing issued

1 Registered Nurse License No. 361652 to Leonard Bernard Fifer, aka Curtis Everett Fifer  
2 (Respondent). The License is currently in a Revoked status; with said order of revocation stayed.  
3 Respondent is on probation to the Board pursuant to specific terms and conditions by prior  
4 decision of the Board which were in effect at all times relevant to the charges brought in  
5 Accusation and Petition to Revoke Probation No. 2000-148. Respondent's license will expire on  
6 September 30, 2005, unless renewed.

#### 7 JURISDICTION

8 4. Petition to Revoke Probation No. 2000-148 was filed on January 22, 2004  
9 before the Board of Registered Nursing (Board), Department of Consumer Affairs; An  
10 Accusation and First Amended Petition to Revoke Probation was thereafter filed on June 10,  
11 2004 and is currently pending against Respondent. The original Petition to Revoke Probation  
12 and all other statutorily required documents were properly served on Respondent on February 2,  
13 2004. Respondent timely filed his Notice of Defense contesting the Accusation and Petition to  
14 Revoke Probation. The Accusation and First Amended Petition to Revoke Probation was served  
15 on June 10, 2004 and deemed contested by the original Notice of Defense filed by Respondent. A  
16 copy of Accusation and First Amended Petition to Revoke Probation No. 2000-148 is attached as  
17 exhibit A and incorporated herein by reference.

18 Thereafter, pursuant to the matter was set for hearing before an Administrative  
19 Law Judge of the Office of Administrative Hearings on August 19, 2004. At said hearing  
20 Respondent appeared and prior to the introduction of evidence, produced evidence of compliance  
21 with the original Decision and Order of the Board which placed him on probation on April 6,  
22 2002. Said evidence was not previously available to the Board's Probation monitor. When said  
23 evidence was reviewed by the Board's Probation Officer, he determined that Respondent had  
24 substantially complied with a number of the probationary conditions imposed upon him, but had  
25 done so without obtaining prior approval of the Board's representative that the actions  
26 contemplated would satisfy the Board's probationary terms and conditions.

#### 27 ADVISEMENT AND WAIVERS

28 5. Respondent has carefully read, and understands the charges and allegations

in Accusation and Petition to Revoke Probation No. 2000-148. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation and Petition to Revoke Probation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

### CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in  
Accusation and Petition to Revoke Probation No. 2000-148.

9. Respondent agrees that his Registered Nurse License is subject to discipline for violation of the terms and conditions of his probation and he agrees to be bound by the Board's imposition of a new and superceding discipline as set forth in the Disciplinary Order below.

### CIRCUMSTANCES IN MITIGATION

10. Respondent Leonard Bernard Fifer appeared at the hearing and presented the Board's Probation officer and counsel for Complainant with the following new information:

a. Los Angeles Superior Court certified minutes which demonstrated that on June 4, 2004 he completed the requirements of his diversion program in Case # TA 068434 and that the Court had then dismissed the case. This action occurred prior to the filing of the Accusation and First Amended Petition to Revoke Probation and bars use of the conviction and related reports by Complainant..

b. Respondent represented that he had also obtained dismissal of Case #



1 TA067455 but learned that this part of the Superior Court's order was not on the same minute  
2 order as Case # TA 068434. Respondent subsequently provided proof to the Board's Probation  
3 Officer that this he had completed the Court's diversion program and that Case # TA067455 had  
4 also been dismissed on June 4, 2004. This action occurred prior to the filing of the Accusation  
5 and First Amended Petition to Revoke Probation and bars use of the conviction and related  
6 reports by Complainant.

7 c. Respondent produced 6 letters from nurse support group members who  
8 substantiate Respondent's sobriety, group attendance, and good moral character.

9 d. Respondent produced two letters from counselors who attested to his  
10 participation in and completion of the Shields for Families program.

11 e. Respondent produced eight course completion certificates, including a 72  
12 contact hour RN Refresher, 6 courses in Drug Rehabilitation and Domestic Violence from the  
13 Shields for Families program, and a 30 contact hour course in Physical Assessment.

14 f. It is the conclusion of the Board's Probation Officer that Respondent has  
15 demonstrated by positive steps that he is motivated to retain his license and willing to change  
16 both his behavior and character and apply what he has learned in his recovery program.

17 g. The Board's Probation Officer has reviewed the rehabilitation programs in  
18 which Respondent was enrolled since probation was imposed and determined that they were and  
19 are of the type commonly approved by the Board as satisfaction of probationary conditions Nos.  
20 10, 11, and 13. Respondent's proof of satisfactory completion of these items is accepted as  
21 satisfaction of said conditions to date. Respondent provided proof of compliance with condition  
22 11 on October 16, 2003; however he failed to obtain prior approval from the Board for this  
23 program and finished it after the date allotted by the Board for completion of said program.

24 h. Respondent has represented that his failure to comply with the basic terms  
25 and conditions was inadvertent and that he did not receive the Board's decision after non-  
26 adoption until some time after it was already in effect as he did not have a fixed address. He  
27 represented that he became discouraged when the original ALJ decision was rejected and  
28 concluded that the rejection of the original decision by the Board meant that they intended to

1 revoke his license outright. However, he now realizes his mistakes and wishes to be given the  
2 chance to complete his rehabilitation and contribute to the community as a Registered Nurse.

### 3 CONTINGENCY

4 11. This stipulation shall be subject to approval by the Board of Registered  
5 Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the  
6 Board of Registered Nursing may communicate directly with the Board regarding this stipulation  
7 and settlement, without notice to or participation by Respondent. By signing the stipulation,  
8 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind  
9 the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt  
10 this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall  
11 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action  
12 between the parties, and the Board shall not be disqualified from further action by having  
13 considered this matter.

14 12. The parties understand and agree that facsimile copies of this Stipulated  
15 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
16 force and effect as the originals.

17 13. In consideration of the foregoing admissions and stipulations, the parties  
18 agree that the Board may, without further notice or formal proceeding, issue and enter the  
19 following Disciplinary Order:

### 20 DISCIPLINARY ORDER

21 The Accusation portion of the case filed below is dismissed and the following  
22 Disciplinary Order is issued based upon the findings of violation of the terms and conditions  
23 Nos. 1, 3, and 13 of the Board's original probationary order in Case 2000-148 which became  
24 effective on April 6, 2002 and term and condition No. 2, in that Respondent complied in part  
25 with terms and conditions 11 and 13 by his failure to obtain prior approval of the Board of  
26 Respondent's choices..

27 IT IS HEREBY ORDERED that Registered Nurse License No. 361652 issued to  
28 Respondent Leonard Bernard Fifer is revoked. However, the revocation is again stayed and

1 Respondent is placed on probation for five (5) years from the effective date of this order on the  
2 following terms and conditions.

3 1. Respondent shall obey all federal, state and local laws. A full and detailed  
4 account of any and all violations of law shall be reported by Respondent to the Board in writing  
5 within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this  
6 condition, Respondent shall submit completed fingerprint cards and fingerprint fees within 45  
7 days of the effective date of the decision, unless previously submitted as part of the licensure  
8 application process. Respondent shall submit a recent 2" X 2" photograph of himself within 45  
9 days of the effective date of the final decision.

10 2. Respondent shall fully comply with the conditions of the Probation  
11 Program established by the Board and cooperate with representatives of the Board in its  
12 monitoring and investigation of the Respondent's compliance with the Probation Program.  
13 Respondent shall inform the Board in writing within no more than 15 days of any address change  
14 and shall at all times maintain an active, current license status with the Board, including during  
15 any period of suspension.

16 3. Respondent, during the period of probation, shall appear in person at  
17 interviews/meetings as directed by the Board or its designated representatives.

18 4. Periods of residency or practice as a registered nurse outside of California  
19 will not apply to the reduction of this probation time period. The Respondent must provide  
20 written notice to the Board within 15 days of any change of residency or practice outside the  
21 state.

22 5. Respondent, during the period of probation, shall submit or cause to be  
23 submitted such written reports/declarations and verification of actions under penalty of perjury,  
24 as required by the Board. These reports/declarations shall contain statements relative to  
25 Respondent's compliance with all the terms and conditions of the Board's Probation Program.  
26 Respondent shall immediately execute all release of information forms as may be required by the  
27 Board or its representatives.

28 ///

1           Respondent shall provide a copy of this Decision to the nursing regulatory agency  
2 in every state and territory in which he has a registered nurse license.

3           6.     Respondent, during the period of probation, shall engage in the practice of  
4 registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or  
5 as determined by the Board.

6           For purposes of compliance with the section, "engage in the practice of registered  
7 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or  
8 work in any non-direct patient care position that requires licensure as a registered nurse.

9           If Respondent has not complied with this condition during the probationary term,  
10 and Respondent has presented sufficient documentation of his good faith efforts to comply with  
11 this condition, and if no other conditions have been violated, the Board, in its discretion, may  
12 grant an extension of the Respondent's probation period up to one year without further hearing in  
13 order to comply with this condition.

14           7.     Respondent shall obtain prior approval from the Board before  
15 commencing any employment, paid or voluntary, as a registered nurse. Respondent shall cause  
16 to be submitted to the Board all performance evaluations and other employment related reports as  
17 a registered nurse upon request of the Board.

18           Respondent shall provide a copy of this Decision to his employer and immediate  
19 supervisor prior to commencement of any nursing or other health care related employment.

20           Respondent shall notify the Board in writing within seventy-two (72) hours after  
21 he obtains any nursing or other health care related employment, when such employment is not as  
22 a registered nurse. Respondent shall notify the Board in writing within seventy-two (72) hours  
23 after he is terminated from any registered nursing, other nursing, or other health care related  
24 employment with a full explanation of the circumstances surrounding the termination.

25           8.     Respondent shall obtain prior approval from the Board regarding  
26 Respondent's level of supervision and/or collaboration before commencing or continuing any  
27 employment as a registered nurse.

28   ///

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

9. Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational

1 nurses and/or unlicensed assistive personnel on a case-by-case basis.

2 Respondent shall not work as a faculty member in an approved school of nursing  
3 or as an instructor in a Board approved continuing education program.

4 Respondent shall work only on a regularly assigned, identified and predetermined  
5 worksite(s) and shall not work in a float capacity.

6 If the Respondent is working or intends to work in excess of 40 hours per week,  
7 the Board may request documentation to determine whether there should be restrictions on the  
8 hours of work.

9 10. Respondent shall be suspended from the practice of registered nursing,  
10 until he has enrolled in and successfully completed a course(s) relevant to the practice of  
11 registered nursing.

12 Respondent shall obtain prior approval from the Board before enrolling in the  
13 courses. Respondent shall submit to the Board the original transcripts or certificates of  
14 completion for the above required course or courses. The Board shall return the original  
15 documents to Respondent after photocopying them for its records.

16 11. Respondent, at his expense, shall successfully complete during the  
17 probationary period or shall have successfully completed prior to commencement of probation, a  
18 Board-approved treatment/rehabilitation program of at least six months. As required, reports  
19 shall be submitted by the program on forms provided by the Board. If Respondent has not  
20 completed a board-approved treatment/rehabilitation program prior to commencement of  
21 probation, Respondent, within 45 days from the effective date of the Decision, shall be enrolled  
22 in a program. If a program is not successfully completed within the first nine months of  
23 probation, the Board shall consider Respondent in violation of probation.

24 Based on Probation Program recommendation, each week Respondent shall be  
25 required to attend at least one, but no more than five 12-step recovery meetings or equivalent  
26 (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as  
27 approved and directed by the Board. If a nurse support group is not available, an additional 12-  
28 step meeting or equivalent shall be added. Respondent shall submit dated and signed

1 documentation confirming such attendance to the Board during the entire period of probation,  
2 Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation  
3 program or by a licensed mental health examiner and/or other ongoing recovery groups.

4           12. Respondent shall completely abstain from the possession, injection, or  
5 consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except  
6 when the same are ordered by a health care professional legally authorized to do so as part of a  
7 documented medical treatment program. Respondent shall have sent to the Board, in writing and  
8 within 14 days, by the prescribing physician or dentist, a report identifying the medication,  
9 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the  
10 medication will no longer be required, and the effect on the recovery plan, if appropriate.

11           Respondent shall identify for the Board a single physician, nurse practitioner, or  
12 physician assistant who shall be aware of Respondent's history of substance abuse and will  
13 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled  
14 substances, or mood-altering drugs. The coordinating physician, nurse practitioner, or physician  
15 assistant shall report to the Board on a quarterly basis Respondent's compliance within this  
16 condition. If any substances considered addictive have been prescribed, the report shall identify a  
17 program for the time limited use of any such substances.

18           The Board may require that the coordinating physician, nurse practitioner, or  
19 physician assistant to be a specialist in addictive medicine or to consult with a specialist in  
20 addictive medicine.

21           13. Respondent, at his expense, shall participate in a random, biological fluid  
22 testing or drug-screening program, which the Board approves. The length of time and frequency  
23 will be subject to approval by the Board. Respondent is responsible for keeping the Board  
24 informed of Respondent's current telephone number at all times. Respondent shall also ensure  
25 that messages may be left at the telephone number when he is not available and ensure that  
26 reports are submitted directly by the testing agency to the Board, as directed. Any confirmed  
27 positive finding shall be reported immediately to the Board by the program and the Respondent  
28 shall be considered in violation of probation.

1 In addition, Respondent, at any time during the period of probation, shall fully  
2 cooperate with the Board or any of its representatives and shall, when requested, submit to such  
3 tests and samples as the Board or any of its representatives may require for the detection of  
4 alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

5 If Respondent has a positive drug screen for any substance not legally authorized  
6 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the  
7 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent  
8 from practice pending the final decision on the petition to revoke probation or accusation.

9 14. If Respondent violates the conditions of his probation, the Board, after  
10 giving notice and an opportunity to be heard, may set aside the stay order and impose the stayed  
11 revocation of the Respondent's license.

12 If during the period of probation, an accusation or petition to revoke probation had  
13 been filed against Respondent's license or if the Attorney General's Office has been requested to  
14 prepare and accusation or petition to revoke probation against Respondent's license, the  
15 probationary period shall automatically be extended and shall not expire until the accusation or  
16 petition has been acted upon by the Board. Upon successful completion of probation, the  
17 Respondent's license will be fully restored.

18 15. Each term and condition of probation contained herein is a separate and  
19 distinct term and condition. If any term or condition of this Order, or any application thereof, is  
20 declared unenforceable in whole, in part, or to any extent, the remained of this Order, and all  
21 other applications thereof, shall not be affected. Each term and condition of this Oder shall be  
22 separately valid and enforceable to the fullest extent permitted by law.

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**Exhibit A**

**Accusation and Petition to Revoke Probation No. 2000-148**

1 BILL LOCKYER, Attorney General  
of the State of California  
2 SHARON F. COHEN, R.N., State Bar No. 107140  
Supervising Deputy Attorney General  
3 California Department of Justice  
300 So. Spring Street, Suite 1702  
4 Los Angeles, CA 90013  
Telephone: (213) 897-2533  
5 Facsimile: (213) 897-2804  
6 Attorneys for Complainant

7  
8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation and First  
12 Amended Petition to Revoke Probation Against:

13 LEONARD BERNARD FIFER  
a.k.a. CURTIS EVERETT FIFER  
1901 East 63rd Street  
14 Long Beach, CA 90805

15 Registered Nurse License No. 361652

16 Respondent.

Case No. 2000-148

OAH No. L-2004030483

**ACCUSATION AND FIRST  
AMENDED PETITION TO REVOKE  
PROBATION**

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation and  
21 Amended Petition to Revoke Probation solely in her official capacity as the Executive Officer of  
22 the Board of Registered Nursing (Board), Department of Consumer Affairs.

23 2. On or about August 31, 1983, the Board issued Registered Nurse License  
24 No. 361652 to Leonard Bernard Fifer, also known as Curtis Everett Fifer (Respondent). The  
25 Registered Nurse License was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on September 30, 2005, unless renewed.

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1                   8.       Section 2761 of the Code states, in pertinent part:

2                   "The board may take disciplinary action against a certified or licensed nurse or  
3 deny an application for a certificate or license for any of the following:

4                   "(a) Unprofessional conduct . . .

5                   . . .

6                   "(d) Violating or attempting to violate, directly or indirectly, or assisting in or  
7 abetting the violating of, or conspiring to violate any provision or term of this chapter [chapter 6,  
8 commencing with section 2700] or regulations adopted pursuant to it.

9                   . . .

10                  "(f) Conviction of a felony or of any offense substantially related to the  
11 qualifications, functions, and duties of a registered nurse, in which event the record of the  
12 conviction shall be conclusive evidence thereof."

13                  9.       Section 2762 of the Code states:

14                  "In addition to other acts constituting unprofessional conduct within the meaning  
15 of this chapter [chapter 6, commencing with section 2700], it is unprofessional conduct for a  
16 person licensed under this chapter to do any of the following:

17                  "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a  
18 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish  
19 or administer to another, any controlled substance as defined in Division 10 (commencing with  
20 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as  
21 defined in Section 4022."

22                  10.       Section 490 of the Code states:

23                  "A board may suspend or revoke a license on the ground that the licensee has been  
24 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties  
25 of the business or profession for which the license was issued. A conviction within the meaning  
26 of this section means a plea or verdict of guilty or a conviction following a plea of nolo  
27 contendere. Any action which a board is permitted to take following the establishment of a  
28 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has

1 been affirmed on appeal, or when an order granting probation is made suspending the imposition  
2 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the  
3 Penal Code."

4 11. California Code of Regulations, title 16, section 1444, states:

5 "A conviction or act shall be considered to be substantially related to the  
6 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the  
7 present or potential unfitness of a registered nurse to practice in a manner consistent with the  
8 public health, safety, or welfare. . . ."

9 12. Section 125.3, subdivision (a), of the Code states, in pertinent part:

10 "Except as otherwise provided by law, in any order issued in resolution of a  
11 disciplinary proceeding before any board within the department . . . the board may request the  
12 administrative law judge to direct a licentiate found to have committed a violation or violations  
13 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
14 enforcement of the case."

15 **CONTROLLED SUBSTANCE**

16 13. Cocaine base is a Schedule I controlled substance as designated by Health  
17 and Safety Code section 11054(f)(1).

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Conviction of a Substantially Related Crime)**

20 14. Respondent is subject to disciplinary action under Sections 490 and  
21 2761(f) of the Code, in that Respondent was convicted of a crime substantially related to the  
22 qualifications, functions, or duties of a registered nurse, as defined by for conviction of a  
23 substantially related crime, as defined in California Code of Regulations, title 16, section 1444,  
24 as follows:

25 a. On or about April 14, 1999, Respondent was convicted of one count of  
26 violating Health and Safety Code section 11350(a) (possession of a controlled substance), a  
27 felony, in the Municipal Court of Long Beach Judicial District, County of Los Angeles, State of

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1 California, Case No. NA040096, entitled *The People of the State of California v. Leonard*  
2 *Bernard Fifth*.

3 b. The circumstances surrounding the conviction are that on or about  
4 March 22, 1999, Respondent had a controlled substance in his possession (cocaine), in violation  
5 of Health and Safety Code section 11350(a).

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Possession of a Controlled Substance)**

8 15. Respondent is subject to disciplinary action under Section 2761(a) of the  
9 Code on the grounds of unprofessional conduct, as defined by Section 2762(a), in that on or  
10 about January 29, 2003, Respondent was arrested for possession of a controlled substance  
11 (cocaine) and of a smoking device (pipe), in violation of Health and Safety Code sections  
12 11350(a) and 11354.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Possession of a Controlled Substance)**

15 16. Respondent is subject to disciplinary action under Sections 2761(a),  
16 2761(d), and 2762(a), on the grounds of unprofessional conduct, on the grounds of  
17 unprofessional conduct in that on or about November 23, 2002, Respondent was arrested for  
18 possession of a controlled substance (cocaine) and of a smoking device (glass pipe), in violation  
19 of Health and Safety Code sections 11350(a) and 11354.

20 **FIRST AMENDED PETITION FOR REVOCATION OF PROBATION**

21 17. In a prior disciplinary action entitled "In the Matter of Accusation Against  
22 Leonard Bernard Fifer," Case No. 2000-148, the Board issued a Decision, effective April 6,  
23 2002, in which Respondent's registered nurse license was revoked. However, the revocation was  
24 stayed and Respondent was placed on probation for a period of three (3) years with certain terms  
25 and conditions.

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1                                   **FIRST CAUSE TO REVOKE PROBATION**

2                                   **(Obey All Laws)**

3                   18.     Condition 1 of Respondent's probation states:

4                   "Respondent shall obey all federal, state and local laws. A full and  
5                   detailed account of any and all violations of law shall be reported by respondent to  
6                   the Board in writing within seventy-two (72) hours of occurrence. To permit  
7                   monitoring of compliance with this term, respondent shall submit completed  
8                   fingerprint cards and fingerprint fees within 45 days of the effective date of the  
9                   decision, unless previously submitted as part of the licensure application process.  
10                  Respondent shall submit a recent 2" X 2" photograph of [himself] within 45 days  
11                  of the effective date of the final decision."

12                19.     Respondent's probation is subject to revocation because he failed to  
13                comply with Probation Condition 1, referenced above, in that on or about November 23, 2002,  
14                and January 29, 2003, he failed to obey all laws, and possessed a controlled substance and  
15                smoking device, in violation of the Health and Safety Code, as set forth above in paragraphs 15  
16                and 16.

17                20.     Respondent also failed to comply with Probation Condition 1, in that  
18                Respondent failed to timely submit a recent 2"x2" photograph and completed fingerprint cards to  
19                the Board within forty-five (45) days of the effective date of the Decision. The fingerprint cards  
20                and photographs were not submitted to the Board until November 4, 2003, more than 1½ years  
21                after the effective date of the Decision.

22                                   **SECOND CAUSE TO REVOKE PROBATION**

23                                   **(Failure to Appear in Person)**

24                21.     Condition 3 of Respondent's probation states that, "Respondent, during  
25                the period of probation, shall appear in person at interviews/meetings as directed by the Board or  
26                its designated representatives."

27                22.     Respondent's probation is subject to revocation because he failed to comply with  
28                Probation Condition 3, referenced above, in that Respondent failed to appear for probation



1 interviews scheduled on May 8, 2002, July 10, 2002, October 17, 2002, and January 16, 2003.

2 The Respondent did not appear at a scheduled probation interview until October 16, 2003.

3 **THIRD CAUSE TO REVOKE PROBATION**

4 **(Failure to Participate in Treatment/Rehabilitation Program)**

5 23. Condition 11 of Respondent's probation states, in pertinent part:

6 "Respondent, at his expense, shall successfully complete during the  
7 probationary period or shall have successfully completed, prior to the  
8 commencement of probation, a Board-approved treatment/rehabilitation program  
9 of at least six months. . . . If Respondent has not completed a Board-approved  
10 treatment/rehabilitation program prior to commencement of probation,  
11 Respondent, within 45 days from the effective date of the decision, shall be  
12 enrolled in a program. If a program is not successfully completed within the first  
13 nine months of probation, the Board shall consider Respondent in violation of  
14 probation."

15 24. Respondent's probation is subject to revocation because he failed to  
16 comply with Probation Condition 11, referenced above, in that he failed to timely provide  
17 evidence of completing a rehabilitation program within the first nine months of the probation  
18 term, or timely provide evidence of enrollment into a program within 45 days of the effective  
19 date of the Board's Decision. The Respondent did not provide evidence of participating in a  
20 rehabilitation program until October 16, 2003, approximately 1½ years after the effective date of  
21 the Decision.

22 **FOURTH CAUSE TO REVOKE PROBATION**

23 **(Failure to Abstain from Possession of Psychotropic (Mood Altering) Drugs)**

24 25. Condition 12 of Respondent's probation states, in pertinent part:

25 "Respondent shall completely abstain from the possession, injection, or  
26 consumption by any route of all psychotropic (mood altering) drugs, including  
27 alcohol, except when the same are ordered by a health care professional legally  
28 authorized to do so as part of a documented medical treatment program."

1                   26.     Respondent's probation is subject to revocation because he failed to  
2 comply with Probation Condition 12, referenced above, in that on or about November 23, 2002,  
3 and January 29, 2003, he possessed cocaine as set forth above in paragraphs 15 and 16.

4                   **FIFTH CAUSE TO REVOKE PROBATION**

5                   **(Failure to Participate in Drug Screenings)**

6                   27.     Condition 13 of Respondent's probation states, in pertinent part:

7                   "Respondent, at his own expense, shall participate in a random, biological  
8 fluid testing or drug-screening program, which the Board approves. The length of  
9 time and frequency will be subject to approval by the Board. Respondent is  
10 responsible for keeping the Board informed of respondent's current telephone  
11 number at all times. Respondent shall also ensure that messages may be left at the  
12 telephone number when he is not available and ensure that reports are submitted  
13 directly by the testing agency to the Board, as directed. Any confirmed positive  
14 findings shall be considered a violation of probation."

15                  28.     Respondent's probation is subject to revocation because he failed to  
16 comply with Probation Condition 13, referenced above, in that he failed to participate in the  
17 Board's Drug Screening Program, or a drug screening program approved by the Board.

18                  **SIXTH CAUSE TO REVOKE PROBATION**

19                  **(Failure to Comply with the Probation Program)**

20                  29.     Condition 2 of Respondent's probation states, in pertinent part:

21                  "Respondent shall fully comply with the terms and conditions of the  
22 Probation Program established by the Board and cooperate with representatives of  
23 the Board in its monitoring and investigation of Respondent's compliance with  
24 the Probation Program."

25                  30.     Respondent's probation is subject to revocation in that he failed to comply  
26 with the terms and conditions of the Probation Program as set forth above in paragraphs 19  
27 through 31.

28     ///

1 PRAYER


2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking probation that was granted by the Board of Registered Nursing  
5 in Case No. 2000-148 and imposing the disciplinary order that was stayed, thereby revoking  
6 Registered Nurse License No. 361652, issued to Leonard Bernard Fifer, also known as Curtis  
7 Everett Fifer;

8 2. Ordering Leonard Bernard Fifer to pay the Board of Registered Nursing  
9 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
10 Professions Code section 125.3;

11 3. Taking such other and further action as deemed necessary and proper.

12 DATED: 6/10/04

13  
14   
15 RUTH ANN TERRY, M.P.H., R.N.  
16 Executive Officer  
17 Board of Registered Nursing  
18 Department of Consumer Affairs  
19 State of California  
20 Complainant  
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25 03579110-LA2003600295  
26 80026416.wpd  
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**EXHIBIT B**

**DECISION AFTER NONADOPTION, effective April 6, 2002**  
**Board of Registered Nursing Case No. 2000-148**  
**Office of Administrative Hearings Case No. L-2000040237**

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LEONARD BERNARD FIFER, aka  
CURTIS EVERETT FIFER  
2739 Dollar Street  
Lakewood, CA 90712

Registered Nurse License No. 361652

Respondent.

Case No. 2000-148

OAH No. L2000040237

DECISION AFTER NONADOPTION

Administrative Law Judge Robert Walker, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California, on July 10, 2001.

M. Gayle Askren, Deputy Attorney General, represented complainant Ruth Ann Terry, Executive Officer of the Board of Registered Nursing.

Leonard B. Fifer, respondent, appeared in propria persona.

The Administrative Law Judge issued his Proposed Decision on July 31, 2001. The Board of Registered Nursing ("Board") declined to adopt the Proposed Decision and issued its Notice of Nonadoption of Proposed Decision and ordering of the hearing transcript on September 24, 2001. On November 9, 2001, the Board issued its Order Fixing Date for Submission of Written Argument and on December 13, 2001, the Board extended such date to December 26, 2001. On February 4, 2002, the Board extended the time to rendering a decision to March 7, 2002. The time for filing written argument in this matter having expired, the entire record, including the transcript of said hearing and written argument received from the complainant and respondent, having been read and considered by the Board, pursuant to Government Code section 11517, the Board hereby makes the following decision and order:

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## FACTUAL FINDINGS

1. On or about August 31, 1983, the Board of Registered Nursing issued registered nurse license number 361652 to Leonard B. Fifer, the respondent.
2. On January 30, 1992, in Orange County Superior Court, respondent was convicted of violating section 466.3 of the Penal Code, possession of burglary tools. The conviction was on a plea of guilty. The court imposed a fine of \$460.
3. The incident that gave rise to the 1992 conviction occurred on December 24, 1991. Respondent and a man whom he had just met used cocaine together. Respondent was not working, was using cocaine, and needed money. The man told respondent that he had been successful in stealing money at a particular shopping center earlier that day. He had a crow bar and other burglary tools. Respondent, knowing that the man intended to commit burglary, drove him back to the shopping center. The police arrested both of them.
4. On May 24, 1993, in Los Angeles County Superior Court, respondent was convicted of violating subdivision (a) of section 11350 of the Health and Safety Code, possession of cocaine. The conviction was on a plea of nolo contendere. The court placed respondent on probation for three years. As conditions of probation the court required respondent to serve 120 days in jail, pay fees and fines totaling \$350, obtain drug counseling, and register as a narcotics offender. There were other standard conditions of probation. Regarding the 120 days of jail time, the court credited respondent with 108 days for time already served and with 36 days pursuant to section 4019 of the Penal Code.
5. The 1993 conviction resulted from respondent's being in possession of rock cocaine on May 10, 1993.
6. On December 17, 1998, in Riverside County Superior Court, respondent was convicted of violating section 496 of the Penal Code, receiving stolen property. The conviction was on a plea of guilty. The court placed respondent on probation for three years. As conditions of probation the court required respondent to serve 21 days in jail and pay a fine of \$100. There were other standard conditions of probation. Regarding the 21 days of jail time, the court credited respondent with 15 days for time already served and with six days pursuant to section 4019 of the Penal Code.
7. The incident that gave rise to the 1998 conviction concerned respondent's unauthorized use of his sister's truck. In May of 1998 respondent was living in his sister's home so that he could help take care of their mother, who was ill. The sister authorized respondent to use her truck to transport their mother to doctors' appointments. On May 14 respondent took his mother to an appointment and returned home. The sister, who also is a nurse and who was scheduled to work later that day, was sleeping. Respondent, without the sister's permission, took the truck and went off to do something that had nothing to do with the care of their mother. He failed to return in time for his sister to use her truck to go to work, and she, with good cause, was angry. In anger, she called the police and reported that

her truck had been stolen. The police stopped respondent and detained him in jail for three days. They then released him and, according to respondent's recollection, told him that there was no case for car theft and that the matter had been dropped. In fact, the case had not been dropped. A warrant was issued, and, seven months later, on December 8, respondent was arrested and again held in jail. He pled not guilty, and the court set a preliminary hearing for December 17. Respondent was working as a nurse. His employer told him that, if he did not return to work within two weeks, he would lose his job. Respondent's attorney advised him that he could plead guilty to a lesser charge, be released, and avoid the risk of losing his job. Respondent then pled guilty and was released. Respondent submitted a notarized letter from his sister corroborating his testimony concerning the incident. This is a matter that should have been dealt with outside of the criminal justice system. Respondent's conduct was irresponsible and inconsiderate but hardly criminal.

8. In 2000 respondent was charged with a narcotics violation. Respondent admits that he had used and was addicted to cocaine. The court placed respondent in a diversion program. Beacon House Association of San Pedro operates an alcohol and drug recovery program, and the San Pedro and Long Beach Superior Court refers defendants to Beacon House in connection with the court's diversion program.

9. Respondent began living at and receiving treatment at Beacon House on October 4, 2000. The treatment included individual counseling, group therapy, work and chores, 12-step meetings, community service, and classroom drug and alcohol education. Respondent took classes in parenting, anger management, relapse prevention, HIV/AIDS awareness, general health and nutrition, principles of sobriety, and 12-step principles and traditions. On May 30, 2001, respondent completed the residential portion of the Beacon House program and was no longer required to live there. He, however, has chosen to continue living there and is permitted to stay indefinitely.

10. For the first four months respondent was at Beacon House, he was given five toxicology tests per week. For the second four months, he was given three tests per week. At present he is being given one test per week, and that will continue to October of 2001. The test results confirm that respondent has not used drugs since he entered Beacon House early in October of 2000. Respondent declares that, in fact, he has not used drugs since May 30, 2000.

11. While at Beacon House, respondent has completed 338 hours of community service. He has worked at the gay pride festival, swept streets in San Pedro, fed the homeless, cleaned parking lots at Long Beach Port, and served as a security officer at parades.

12. Bill Maddox, Program Director of Beacon House, wrote a letter in support of respondent. Mr. Maddox said that respondent has, "shown strong evidence of seriousness about recovery...." He said, further:

Leonard follows directions well; gets along nicely with peers and staff and abides by all rules and regulations. He is helpful and has developed a good grasp of recovery principles. He has also taken on commitments within the 12-step meeting fellowship, both at Beacon House and in the outside sobriety community. Men in our Primary Program are required to attend ten 12-step meetings or more each week, thus helping them establish a support network of sober friends outside the scope of the house.

13. Jonathon Aleksandro is a program coordinator and substance abuse counselor at Beacon House. He has been respondent's counselor since respondent came to the program in October of 2000. Mr. Aleksandro meets with respondent once a week for between one-half hour and one hour. On the basis of respondent's performance so far, Mr. Aleksandro has concluded that the likelihood of respondent's remaining drug free is very good.

14. Dale Wesche is respondent's sponsor in a 12-step program. He is enthusiastic about respondent's progress. He notes that respondent absolutely acknowledges responsibility for his drug use. Mr. Wesche has observed that respondent appears to think more clearly and be more spirited. Mr. Wesche has concluded that respondent has turned his life around.

15. Mr. Wesche cited an interesting statistic. He said that it has been demonstrated that, if one stays at Beacon House for more than 18 months, he or she has a 76% chance of never drinking or using drugs again.

16. Respondent declares that he has learned to be responsible. He now keeps appointments. He carefully complies with the principles of the Narcotics Anonymous program. He has come to grips with the fact that he cannot use drugs occasionally. The only way for him to avoid drug abuse is to abstain totally. He is grateful for the difference that Beacon House and Narcotics Anonymous have made in his life.

17. Respondent declares that he has never used prescription drugs. He says that, in his 18 years of nursing practice, there has never been an occasion when a drug that was under his supervision was missing.

18. In addition to participating in the Beacon House and Narcotics Anonymous programs, respondent has recently joined and participates in a support group that meets once a week. This is a group of nurses who meet to discuss mutual problems.

19. Respondent no longer associates with the people with whom he associated at the time he was using drugs. He now spends his recreational time with friends he has met through Beacon House.



20. Counsel for complainant, after hearing all of the evidence, made a recommendation. Counsel recommended that there be an actual suspension of respondent's license for a period of six months to one year. He recommended, further, that respondent's license be revoked but that the revocation be stayed and that respondent be granted a probationary license subject to certain conditions. Counsel recommended a period of probation of three years, and he recommended that one of the conditions of probation be that respondent continue to participate in a drug rehabilitation program.

### LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings numbers 4 and 5, it is determined that on May 10, 1993, respondent was in possession of rock cocaine a controlled substance. Further, by reason of the matters set forth in Finding number 8, it is determined that, early in 2000, respondent used and was addicted to cocaine. Pursuant to subdivision (a) of section 2762 of the Business and Professions Code, it is determined that respondent engaged in unprofessional conduct. Thus, pursuant to subdivision (a) of section 2761 of the Business and Professions Code, there are grounds to impose discipline on his license.

2. By reason of the matters set forth in Findings numbers 2 through 5, it is determined that respondent has been convicted of crimes that are substantially related to the qualifications, functions, and duties of a registered nurse. On January 30, 1992, respondent was convicted of possession of burglary tools. On May 24, 1993, respondent was convicted of possession of cocaine. Thus, pursuant to subdivision (f) of section 2761 of the Business and Professions Code, there are grounds to impose discipline on his license.

3. Complainant alleges that the conviction of December 17, 1998, which resulted from the incident in which respondent used his sister's truck, also is a ground for imposing discipline. That allegation is not sustained. By reason of the matters set forth in Finding 7, it is determined that the facts underlying that conviction show that respondent's conduct was not related to the qualifications, functions, and duties of a registered nurse in any way that would justify the imposition of discipline. While it is true that a conviction for receiving stolen property generally would relate to the qualifications, functions, and duties of a registered nurse, it does not in this case. Respondent's failure to return home in time for his sister to use her truck to go to work was irresponsible and inconsiderate, but it does not rise to the level of being a ground to impose discipline on his license.

4. By reason of the matters set forth in Finding number 8, it is determined that, while registered as a nurse, respondent used cocaine to an extent or in a manner dangerous or injurious to himself, another person, or the public. Pursuant to subdivision (b) of section 2762 of the Business and Professions Code, it is determined that respondent engaged in unprofessional conduct. Thus, pursuant to subdivision (a) of section 2761 of the Business and Professions Code, there are grounds to impose discipline on his license.

5. Complainant alleges that the conviction of May 24, 1993, for possession of cocaine also supports a determination that, while registered as a nurse, respondent used

cocaine to an extent or in a manner dangerous or injurious to himself, another person, or the public. That conviction, however, was for possession, not use, and that allegation is not sustained.

6. Complainant alleges that, while registered as a nurse, respondent used alcohol to an extent or in a manner dangerous or injurious to himself, another person, or the public. The evidence does not support that allegation, and that allegation is not sustained.

7. Complainant alleges that, while registered as a nurse, respondent was convicted of a criminal offense involving the consumption of drugs. In support of this allegation complainant cites the conviction of May 24, 1993, for possession of cocaine. That conviction, however, was for possession, not use, and that allegation is not sustained.

8. Complainant alleges that, while registered as a nurse, respondent was convicted of a criminal offense involving the consumption of alcoholic beverages. The evidence does not support that allegation, and that allegation is not sustained.

9. Complainant alleges that respondent violated provisions or terms of sections 2761 and 2762 of the Business and Professions Code. Neither of those sections, however, establishes standards of conduct that can be violated. Section 2761 is a list of grounds for taking disciplinary action. If one has done something on that list, he or she is subject to discipline. The list of grounds for imposing discipline, however, is not something that one can violate. Section 2762 causes certain acts to be deemed to be "unprofessional conduct" as a matter of law. That section, in effect, is a rule of evidence causing the proof of one thing to be deemed to establish something else. One may do something that, as a matter of law, is deemed to amount to one's having done something else. This rule that equates one thing to another, however, is not something that one can violate.

10. While there are grounds to impose discipline, there is compelling evidence that respondent has made substantial progress toward rehabilitation and that protecting the public interest does not require outright revocation of his license.

11. The evidence also supports counsel's conclusion that respondent's license be revoked, that the revocation be stayed for three years, and that a probationary license be issued subject to conditions of probation including an actual suspension of respondent's license. The circumstances surrounding the conviction that grew out of respondent's unauthorized use of his sister's truck show that that matter should never have been dealt with in the criminal justice system. Respondent, of course, cannot collaterally attack the conviction. Nevertheless, this truly was a case in which his guilty plea was a matter of expediency to avoid the risk of losing his job. The 1992 conviction for possession of burglary tools grew out of respondent's needing money because of his addiction. Other than that conviction, there is no evidence that respondent is a dishonest person. That conviction is almost ten years old, and, if respondent deals with his drug problem, there is no reason to expect that he will become involved in dishonesty. Thus, the gravamen of this matter, as it relates to rehabilitation, is respondent's addiction. Respondent has completed the required

residential portion of the Beacon House program and has chosen to continue to live there. He has undergone a rigorous toxicology testing program and continues to be tested. The test results confirm that respondent has not used drugs since he entered Beacon House early in October of 2000. While at Beacon House, respondent has completed 338 hours of community service. Mr. Maddox, Program Director of Beacon House, says that respondent has shown strong evidence of seriousness about recovery, follows directions well, gets along nicely with peers and staff, abides by all rules and regulations, is helpful, and has developed a good grasp of recovery principles. Mr. Aleksandro, respondent's counselor, has concluded that the likelihood of respondent's remaining drug free is very good. Mr. Wesche, respondent's sponsor in a 12-step program, notes that respondent absolutely acknowledges responsibility for his drug use. Respondent is committed to complying with the principles of the Narcotics Anonymous program. He has come to grips with the fact that he cannot use drugs occasionally. He recognizes that the only way for him to avoid drug abuse is to abstain totally. Respondent no longer associates with the people with whom he associated at the time he was using drugs. He now spends his recreational time with friends he has met through Beacon House. Respondent is to be commended for turning his life around and should be encouraged to continue to strengthen his recovery and rehabilitation. Respondent's progress demonstrates that the public interest can be protected by the board's imposing a period of actual suspension and a stayed revocation subject to conditions of probation.

12. Complainant submitted no evidence in support of the prayer for cost recovery.

#### ORDER

Registered nurse license number 361652 issued to Leonard B. Fifer is revoked. The order of revocation, however, is stayed for a period of three years. A probationary license shall be issued for the period of probation on the following conditions.

1. Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit completed fingerprint cards and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process. Respondent shall submit a recent 2" X 2" photograph of herself within 45 days of the effective date of the final decision.

2. Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

3. Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

4. Periods of residency or practice as a registered nurse outside of California will not apply to the reduction of this probationary term. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state.

5. Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the terms and conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

6. Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition.

7. Respondent shall obtain prior approval from the Board before commencing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his employer and immediate supervisor prior to commencement of any nursing or other health care related employment.

Respondent shall notify the Board in writing within seventy-two (72) hours after he obtains any nursing or other health care related employment, when such employment is not as a registered nurse. Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated from any registered nursing, other nursing, or other health

care related employment with a full explanation of the circumstances surrounding the termination.

8. Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing any employment as a registered nurse.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each workday. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

9. Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. Respondent shall be suspended from the practice of registered nursing, until he has enrolled in and successfully completed a course(s) relevant to the practice of registered nursing.

Respondent shall obtain prior approval from the Board before enrolling in the courses. Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course or courses. The Board shall return the original documents to respondent after photocopying them for its records.

11. Respondent, at his expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation, a Board-approved treatment/rehabilitation program of at least six months. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Probation Program recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e. g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or by a licensed mental health examiner and/or other ongoing recovery groups.

12. Respondent shall completely abstain from the possession, injection, or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of a documented medical treatment program. Respondent shall have sent to the Board, in writing and within 14 days, by the prescribing physician or dentist, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the

date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner, or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances, or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require that the coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine or to consult with a specialist in addictive medicine.

13. Respondent, at his expense, shall participate in a random, biological fluid testing or drug-screening program, which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives and shall, when requested, submit to such tests and samples as the Board or any of its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or accusation.

14. If respondent violates the conditions of his probation, the Board, after giving notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or if the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board. Upon successful completion of probation, the respondent's license will be fully restored.

15. Each term and condition of probation contained herein is a separate and distinct term and condition. If any term or condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each term and condition of this Order shall be separately valid and enforceable to the fullest extent permitted by law.

The effective date of this Decision is April 6th, 2002.

DATED: March 7th, 2002

*Sandra L. Erickson*  
SANDRA ERICKSON  
Board President  
Board of Registered Nursing



**EXHIBIT C**

**FIRST AMENDED ACCUSATION**  
**Board of Registered Nursing Case No. 2000-148**  
**Office of Administrative Hearings Case No. L-2000040237**

1 BILL LOCKYER, Attorney General  
of the State of California  
2 M. GAYLE ASKREN, State Bar No. 52189  
Deputy Attorney General  
3 California Department of Justice  
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4 San Diego, California 92101  
5 P.O. Box 85266  
San Diego, California 92186-5266  
6 Telephone: (619) 645-2087  
Facsimile: (619) 645-2061

7 Attorneys for Complainant

8  
9 **BEFORE THE**  
10 **BOARD OF REGISTERED NURSING**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the **Accusation** Against:

Case No. 2000-148

14 **LEONARD B. FIFER, R.N.**  
15 1003 Beacon Street  
San Pedro, California 90731

**FIRST AMENDED  
ACCUSATION**

16 Registered Nurse License No. 361652

17 Respondent.

18  
19  
20 Complainant alleges:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation  
23 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,  
24 Department of Consumer Affairs.

25 2. On or about August 31, 1983, the Board of Registered Nursing issued  
26 Registered Nurse License Number 361652 to Leonard B. Fifer, R.N. ("Respondent"). The  
27 Registered Nurse License was in full force and effect at all times relevant to the charges brought  
28 herein and will expire on September 30, 2001, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing ("Board"), under the authority of the following sections of the Business and Professions Code ("Code").

4. Section 2761 of the Code states, as relevant hereto, that:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

". . . .

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

". . . .

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

". . . ."

5. Section 2762 of the Code provides, as relevant hereto, that:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as

1 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or  
2 injurious to himself or herself, any other person, or the public or to the extent that such use  
3 impairs his or her ability to conduct with safety to the public the practice authorized by his or her  
4 license.

5           "(c) Be convicted of a criminal offense involving the prescription, consumption,  
6 or self-administration of any of the substances described in subdivisions (a) and (b) of this  
7 section, or the possession of, or falsification of a record pertaining to, the substances described in  
8 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
9 thereof.

10           ". . . ."

11           6.       Section 118, subdivision (b), of the Code provides that the expiration of a  
12 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the  
13 period within which the license may be renewed, restored, reissued or reinstated.

14           7.       Section 125.3 of the Code provides, in pertinent part, that the Board may  
15 request the administrative law judge to direct a licentiate found to have committed a violation or  
16 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
17 and enforcement of the case.

18           8.       Health and Safety Code section 11350 provides, as relevant hereto, that:

19           "(a) Except as otherwise provided in this division, every person who possesses  
20 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision  
21 (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section  
22 11054, or specified in subdivision (b), (c), or (g) of Section 11055, or (2) any controlled  
23 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written  
24 prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state,  
25 shall be punished by imprisonment in the state prison.

26           ". . . ."

27           9.       Cocaine compounds are Schedule I controlled substances as defined by Health  
28 and Safety Code Section 11054(f)(1).

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1                   Third Conviction

2                   E.     On or about January 30, 1992, in Orange County Superior Court,  
3 case number LAW 230737PO entitled *People vs. Leonard Bernard Fifer*, respondent was  
4 convicted by the court on his plea of guilty of violating Penal Code section 466.3  
5 (possession of burglary tools).

6                   F.     The circumstances of the conviction are that on or about December  
7 24, 1991, respondent was found to have in his possession burglary tools in Los Alamitos  
8 with the intent to commit theft of, or damage to, coin-operated machines.

9                   THIRD CAUSE FOR DISCIPLINE

10                  (Use of Controlled Substance, Etc., Placing Self or Others in Danger Thereby)

11                  12.     Respondent has subjected his license to discipline pursuant to Code  
12 section 2762(b) on the grounds of unprofessional conduct in that while licensed as a registered  
13 nurse, respondent used alcoholic beverages and cocaine to an extent or in a manner dangerous or  
14 injurious to himself, any other person, or the public, as set forth in paragraphs 11C and 11D.

15                  FOURTH CAUSE FOR DISCIPLINE

16                  (Conviction of Criminal Offense Re: Consumption, Etc., of Controlled Substance, Etc.)

17                  13.     Respondent has subjected his license to discipline pursuant to Code  
18 section 2761(a) on the grounds of unprofessional conduct, as defined in section 2762(c) of the  
19 Code in that he was convicted of offenses concerning the consumption of alcoholic beverages  
20 and drugs as set forth in paragraphs 11C and 11D.

21                  FIFTH CAUSE FOR DISCIPLINE

22                  (Violating Provisions of the Code)

23                  14.     Respondent has subjected his license to discipline pursuant to Code  
24 section 2761(d) in that he has violated provisions or terms of the chapter pertaining to registered  
25 nurses, in that:

26                  A.     Complainant incorporates by reference and realleges the following  
27 Paragraphs of this Accusation in their entirety: 10, 11, 12, and 13, and all the allegations  
28 incorporated therein.

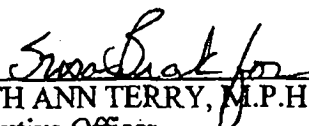
1 WHEREFORE, complainant prays that a hearing be held and that the Board of  
2 Registered Nursing make its order:

3 1. Revoking or suspending registered nurse license number 361652 issued to  
4 Leonard Bernard Fifer.

5 2. Ordering Leonard Bernard Fifer to pay the Board its costs for investigation  
6 and enforcement according to proof at the hearing, pursuant to Business and Professions Code  
7 section 125.3.

8 3. Taking such other and further action as may be deemed proper and  
9 appropriate.

10 DATED: 5/4/01

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13 RUTH ANN TERRY, M.P.H., R.N.  
14 Executive Officer  
15 Board of Registered Nursing  
16 Department of Consumer Affairs  
17 State of California

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27 Complainant